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THE JOURNAL takes pleasure in announcing the following appointments to the Editorial Board from the Class of 1910: James Dugdale Baird, of Carthage, Ill.; Arthur Milton Comley, of Bridgeport, Conn.; Eldon Lewis Hilditch, of Thompsonville, Conn.; Thomas Connelly Malley, of Springfield, Mass.

CRIMINAL LIABILITY OF CORPORATIONS.

In the case of *The People v. The Rochester Railway and Light Company*, 41 N. Y. Law J. No. 6, it was *held*, that a corporation is not, under the Penal Code, indictable for manslaughter in the second degree. The provisions of the Code defining homicide and manslaughter as the killing of one human being by another, do not include corporations. Sects. 179, 180, etc. The Rochester Railway and Light Company had been indicted for the crime of manslaughter in the second degree, because it, per allegations, installed in a residence certain apparatus so negligently that gases escaping therefrom caused the death of an inmate. Upon a demurrer to the indictment the question of whether a corporation may be indicted under Section 193 of the Penal Code arose. The court could not discover any evidence of an intent upon the part of the legislature to abandon the limitations of its enactments to human beings or to include a corporation as a criminal. In reach-

ing this conclusion, however, interpreting a specific provision of the Code, the court briefly considered the general question, whether a corporation is capable of committing in any form such a crime as that of manslaughter.

And in the first place, were it not for the fact that it appears to have partaken of Phoenix-like qualities, it would doubtless be wearisome to the reader to again state that although Lord Chief Justice Holt is said to have held that, "A corporation is not indictable, although the particular members of it are." *Anon.*, 12 Mod. 559, that in modern times this doctrine, if it were ever promulgated,* has absolutely no stand in courts or among text writers. Since a corporation, "is an artificial being, invisible, intangible and existing only in contemplation of law, it must act by its officers and agents, and their purposes, motives and intent are just as much those of the corporation as are the things done. Although, from the very nature of its existence, a corporation cannot be imprisoned bodily, yet it may be fined, and the fine may be enforced against its property, or its charter may be forfeited because of some nonfeasance or malfeasance or misfeasance, the fear of which forfeiture could certainly be made as strong a deterrent force with a corporation, as is imprisonment with the average individual.

There is, doubtless, no principle of corporation law better settled to-day than the one that a corporation may be indicted and fined for offenses consisting merely of nonfeasance. In quite a number of the early cases a distinction was made between the criminal responsibility for a nonfeasance and for responsibilities for a misfeasance. While it was conceded that an indictment would lie for the one, it was held that it would not lie for the other. *Com. v. Swift Run Gap Turnpike Co.*, 2 Va. Cas. 363. Such holdings, however, have not been approved, and the principle is now well established that a corporation may be indicted for a misfeasance or malfeasance as well as for a nonfeasance. *Reg. v. Great North of England Ry. Co.*, 9 Q. B., A. & C., 315.

Lord Denman, C. J., when it was urged in behalf of corporations that it was unnecessary to hold them criminally liable for acts of misfeasance, since their officers who do the act may be indicted, said: "Of this there is no doubt. But the public know nothing of the former, and the latter, if they can be identified, are commonly persons of the lowest rank, wholly incompetent to make any reparation for the injury." *Reg. v. Railway*, *supra*.

In the same case appears a *dictum* to the effect that a corporation cannot be guilty of an offense which involves the element of malice or evil intent; but this broad statement may well be questioned. It is a settled principle that a corporation may be held liable in a civil action for wrongs of its officers and agents involving the element of malice, and that it may be subjected to exemplary or punitive damages, and the assertion that an indictment for offenses which derive their criminality from evil intent is open to question. *State v. Passaic County Agricultural Soc.*, 54 N. J. L. 260. Malice is an element of criminal libel, and an indictment against a corporation for the same has been sustained. *State v. Atchison*, 3 Lea. Tenn., 729. It has also been held that a corporation is indictable for a criminal contempt of court, although a criminal contempt involves a specific intent as a necessary element. The contempt in question was publishing an article in a newspaper, concerning a pending trial, which was deemed to prejudice the jury, and thus tend to prevent a fair trial. *Telegram Newspaper Co. v. Com.*, 172 Mass., 294. There are many *dicta* to the effect that a corporation cannot be guilty of an offense involving the element of personal violence, as assault and battery, riots, etc., *Reg. v. Railway*, *supra*, and there appears to be no reported case to the effect that an indictment has ever been maintained for such crimes.

In the recent case of *The New York Central and Hudson River Railroad Company v. United States*, Vol. 212, No. 5 U. S. Rep., April 5, 1909, wherein an indictment against the railway company and one of its agents for giving rebates was sustained, it was held that "due process of law is not denied by the provisions of the Elkins Act of February 19, 1903, 32 Stat. at L. 847, under which the commission, by corporate officers, acting within the scope of their employment, of criminal violations of the prohibitions of that act against giving rebates, is imputed to the corporation, and the corporation is subject to criminal prosecution therefor." Furthermore, a joinder of both, the agents and the corporation in the indictment, was allowed. At the same time the court held that there are some crimes which, from their very nature, cannot be committed by corporations.

The New York Court of Appeals in *People v. Rochester Railway and Light Company*, *supra*, in a *dictum*, hold: "We have no doubt that a definition of certain forms of manslaughter might have been formulated, which would be applicable to a

corporation, and make it criminally liable for various acts of misfeasance and nonfeasance when resulting in homicide, and among which, very probably, might be included conduct in its substance similar to that here, *vide supra*, charged against the respondent." The court then goes on to plainly show under the existing law that the defendant cannot be held. However, this *dictum* shows the state of sentiment today in regard to holding corporations criminally responsible for a set of crimes for which, thus far in the development of the law, they have not been held, although Massachusetts and some of the other New England states at one time, by statute, allowed an indictment to hold in cases of manslaughter, the fine being given to the widow or next of kin. These laws were in effect merely an effective civil aid, rather than a criminal indictment. The civil liability of corporations has had a steady growth, analagous, though limited, to the criminal, and especially is this true in connection with the growth of tort liability.

The Supreme Court of the United States in the case of *U. S. v. Railway Co.*, *supra*, says: "It is a part of the public history of the times that statutes against rebates could not be effectually enforced so long as individuals only were subject to punishment for violations of the law, when the giving of rebates as concessions inured to the benefit of the corporations, of which the individuals were but the instruments. . . . We see no valid objection in law, and every reason in public policy, why the corporation, which profits by the transaction, and can only act through its agents and officers, shall be held punishable by fine because of the knowledge and intent of its agents to whom it has entrusted authority to act in the subject matter of making and fixing rates of transportation, and whose knowledge and purposes may well be attributed to the corporation for which the agents act."

That the law in connection with the subject of the indictability of corporations is a live, healthy, growing organism, there can be little doubt. Not so very long ago, corporations, from the very fact that they were so few in number, held certain immunities, not held today. These immunities existed not so much from the nature of the corporation as "a soulless creature," and similar attributes more tritely than truly put, as from the fact that it was not so vital a question, while corporations were so few in numbers and small in power, to thresh out each minute doctrine re-

sulting from a *reductio ad absurdum* of the intangible entity theory. The whole growth of the modern law is to take away as much as is possible of fiction, and the doctrine of criminal liability of corporations does not appear to be forming any privileged exception. Our Supreme Court well moulded into words both the spirit of the modern law and the spirit of the times when it said: "There can be no question of the power of Congress to regulate interstate commerce to prevent favoritism, and to secure equal rights to all engaged in interstate trade. It would be a distinct step backward to hold that Congress cannot control those who are conducting this interstate commerce by holding them responsible for the intent and purposes of the agents to whom they have delegated the power to act in the premises." *N. Y. C. & H. Ry Co. v. U. S.*, *supra*.

REGULATION OF CONTRACTS UNDER THE POLICE POWER.

With the formal entrance of the American Federation of Labor into the field of national politics last summer, it became evident that we are destined to have in this country a large body of voters clamoring for laws to advance their own class interests. To what extent our legislators will yield to the persistent demands of labor leaders, it is impossible to determine; but it is almost certain that from time to time waves of radicalism will sweep over the country and carry with them statutes which, if undisturbed, will work much harm and little good to our nation. When, in addition to this, we consider the present optimism of a large number of our lawmakers, who by legislative fiat hope to cure many almost inherent human vices, we realize that the Constitution of the United States grows constantly more important as a protection of individual rights and liberties against unjust and arbitrary enactments.

The protection of the public against encroachment on their privileges by legislation is secured by that part of the fourteenth amendment which declares: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law." This restriction on the power of the states is, however, limited by the fact that both property and liberty are held on such reasonable conditions as may be imposed by the State in the exercise of the